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Supreme Court of the United States

October Term, 1957

No. 424

PIERRE BOURGEOIS,

Petitioner,

—v.—

MERCANTILE NATIONAL BANK OF MIAMI BEACH, FLORIDA, a United States corporation,

Respondent.

PETITION FOR REHEARING OF DECISION

JACOB RASSNER,
Attorney for Petitioner.

Supreme Court of the United States

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AT THE OUTSET WE RESPECTFULLY SUBMIT TO THE COURT THAT THIS APPLICATION FOR RECONSIDERATION OF PETITIONER'S APPLICATION FOR THE WRIT OF CERTIORARI IS MADE FOR REVIEW OF THE QUESTION OF LAW BECAUSE THE PETITIONER CAN ONLY HAVE REVIEW OF HIS RIGHTS IN THE INTERNATIONAL COURT OF JUSTICE AT THE HAGUE IN THE EVENT THIS HONORABLE COURT DOES NOT ENTERTAIN PETITIONER'S APPLICATION FOR THIS WRIT OF CERTIORARI, THAT BEING A PREREQUISITE FOR CONSIDERATION BY THE INTERNATIONAL COURT OF JUSTICE.

Petitioner respectfully submits the question involved is a simple one without any substance to any suggestion that what the respondent-bank undertook might be considered outside the scope of the respondent-bank's powers in law. That the entire undertaking by the respondent-bank was carried in accordance with the commonly accepted com-

mercial manner in which funds from outside cities are deposited and paid out. In this instance, the petitioner, was the owner outright of the funds on deposit in respondent's bank as evidenced in the course of the trial of the written transfer for petitioner's account. The respondent bank having undertaken and acknowledged the petitioner as the owner thereof, it was entirely without power in law and has no right to disburse these funds except upon the express request of the petitioner, which request was not made in this instance.

That in the brief of the respondent in opposition to petitioner's application for a writ of certiorari, reference is made to the Bank of France, which is the bank of issue of the French Government. This is clearly a misstatement. The bank involved in France was the Banque Francaise du Commerce Exterieur, which in France is, one of a number of commercial banks and not to be confused with the Bank of France.

Petitioner submits that the trial Court grievously erred in the very hasty decision given from the bench immediately upon conclusion of the trial, in view of the issues involved.

The petitioner is not as stated in the respondent's brief on the original application, a French national. Petitioner is and was prior to the trial a citizen of the United States, and the transaction having been based on the improper transfer of petitioner's deposit by the respondent-bank, the petitioner should be given the opportunity of a full, complete review of petitioner's rights in the United States Court, and not be compelled to seek relief in a foreign jurisdiction.

If petitioner, as was represented to the Court by respondent, was a French national, instead of the fact that he is a United States citizen, petitioner would have no problem in having a complete legal examination of all of the facts in this matter before the International Court of

Justice of the Hague. The petitioner firmly believes that as can be demonstrated beyond any doubt that he, a United States citizen had his own money deposited in a bank chartered and established in the United States, and he should apply to have a complete review of his rights in this United States Supreme Court.

The petitioner respectfully submits that the decision of the Trial Court deprived him of his own property located in this country, in effect attempted to cloak with judicial right the action of the respondent bank in disbursing petitioner's moneys without his request or consent and indeed over his objection, quoting from the testimony of the plaintiff's witness, officer of respondent bank:

> "[11] 'Q. What coded message are you referring to? A. I am referring to the coded message where the Chase Manhattan Bank of New York advised us that our account had been credited $228,570 for the account of Pierre Bourgeois to be established with us.'" (Appendix for appellant Page 26, lines 19-23 inclusive.)

To deny this application would put the petitioner, a citizen of the United States, in the position of having to try what is in effect a domestic commercial case before a foreign tribunal.

The entire transaction as presented to the trial Court in Florida concerned an everyday banking problem of the utmost simplicity, namely, that the respondent bank accepted a deposit for petitioner's account under date of June 1, 1955, and simultaneously accepted from the depositor a non-negotiable promissory note to the order of Chanters Navals de la Civtat, in the same amount, said promissory note by its terms due December 13, 1955, and throughout the trial and as appears in the exhibits offered, the respondent-bank undertook with respect to the note to hold the note for the account of the payee and guarantee

that such moneys (as will be paid on the note) would be forwarded to the payee payable in United States funds drawn on a New York bank, New York, United States of America.

Petitioner submits that an examination of the testimony and the exhibits offered in the trial explicitly shows a breach of trust on the part of the respondent-bank toward the petitioner, which standing of itself would constitute extreme negligence, but petitioner in the trial in his testimony has endeavored to conclusively prove his substantiated understanding that the alternative answer to negligent stupidity could only have been an act of conspiracy to deprive petitioner of his property.

Petitioner firmly believes that his case is fully identical and covered by the law in the decision in the case of *Lewine* v. *National City Bank*, 248 N. Y. 365.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner.

Dated: New York, New York,
December 6, 1957.

Certificate

To the Honorable Chief Justice and Honorable Associate Justices of the Supreme Court of the United States:

Honorable Sirs:

The undersigned attorney for the pettioner hereby certifies that the Petition for Rehearing of Decision herein is presented in good faith and not for the purpose of delay.

Respectfully submitted,

JACOB RASSNER,
Attorney for Petitioner,

Dated, New York, New York, December 6, 1957.